

REPRESENTATIVE FOR PETITIONER: Bradley D. Hasler, Bingham GreeneBaum Doll  
LLP

REPRESENTATIVE FOR RESPONDENT: Nick J. Cirignano, Ziemer, Stayman, Weitzel &  
Shoulders, LLP

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Republic Services Inc.,	)	Petitions:	82-027-13-1-7-01258-17
	)		82-027-14-1-7-01259-17
Petitioner,	)		
	)	Parcel:	82-10-09-08-17404-027
v.	)		
	)	County:	Vanderburgh
Vanderburgh County Assessor,	)		
	)	Assessment Years:	2013 & 2014
Respondent.	)		

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**February 4, 2019**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. Based on an audit, the Vanderburgh County Assessor issued increased personal property assessments to Republic Services, Inc. (“Republic”) to account for street sweeping equipment attached to three street sweeper trucks. We find the street sweeping equipment is an integral and permanent part of the trucks. Thus, the entirety of the trucks, including the street sweeping equipment, falls under the definition of “commercial vehicle” and is subject to excise tax rather than personal property tax.

## PROCEDURAL HISTORY

2. Based on an audit by Tax Management Associates (“TMA”) the Vanderburgh County Assessor raised Republic’s 2013 and 2014 personal property assessments by \$225,720 and a \$314,800 respectively for totals of \$1,983,880 for 2013 and \$2,982,560 for 2014.
3. Republic Services timely filed notices for review with the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2013 and 2014 assessment years. The PTABOA did not issue a determination, and after waiting the statutorily required time, Republic Services filed Form 131 appeals with the Board. On April 26, 2018, our designated Administrative Law Judge (“ALJ”), Timothy Schuster, held a hearing. Neither he nor the Board inspected the subject property.
4. Daniel Bodily, the senior property tax manager for Republic Services, testified under oath for Republic Services. Joseph Lukomski, Jr., of TMA, testified under oath for the Assessor.
5. The following exhibits were submitted:
  - Petitioner’s Ex. P-1: Photo of unit #61 (passenger-side),
  - Petitioner’s Ex. P-2: Photo of unit #61 (rear),
  - Petitioner’s Ex. P-3: Photo of unit #61 (driver-side),
  - Petitioner’s Ex. P-4: Photo of unit #62 (passenger-side),
  - Petitioner’s Ex. P-5: Photo of unit #62 (rear),
  - Petitioner’s Ex. P-6: Photo of unit #62 (driver-side),
  - Petitioner’s Ex. P-7: Photo of unit #63 (passenger-side),
  - Petitioner’s Ex. P-8: Photo of unit #63 (rear),
  - Petitioner’s Ex. P-9: Photo of unit #63 (driver-side),
  - Petitioner’s Ex. P-10: Letter dated April 27, 2017 from the Assessor to Daniel Bodily with attachments,
  - Petitioner’s Ex. P-11: Invoices for units #61, #62, and #63 from Jack Doheny Companies,
  - Petitioner’s Ex. P-12: Indiana Certificate of Vehicle Registration for unit # 61, #62, and #63 issued January 15, 2014,
  - Petitioner’s Ex. P-13: 2016 Indiana Certificate of Vehicle Registration for unit #61, #62, and #63 issued March 11, 2015,
  - Petitioner’s Ex. P-14: 2017 Bureau of Motor Vehicles Customer Registration fees detailed receipt,

Petitioner's Ex. P-15: BMV: Excise Tax Information print out.

Respondent's Ex. A: 2013 and 2014 Form 113 Notice of Assessment/Change,  
Respondent's Ex. B-1: 2013 Form 122 with summary of additional assessments,  
Respondent's Ex. B-2: 2014 Form 122 with summary of additional assessments,  
Respondent's Ex. C: March 3, 2011 Indiana Department of Local Government  
Finance ("DLGF") memorandum.

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) the hearing transcript.

#### FINDINGS OF FACT

7. The property at issue consists of component parts of three "street sweeper" trucks owned by Republic.<sup>1</sup> Two of the trucks are "Whirlwind" sweepers, and the third is a "Broombear" sweeper. Republic purchased the units in October 2012 at a cost of \$245,030 each for the Whirlwinds and \$255,161 for the Broombear. The dealer sold them as completely assembled trucks. Republic did not negotiate component prices and it does not purchase replacement components. The street sweepers are designed to collect and transport trash and debris from the road. The trash and debris is collected via a system of brushes, conveyor belts, and vacuums. A single engine propels the truck down the road and powers the sweeping equipment. The trucks have operating controls built into the console so that the driver of a truck can both drive and operate the sweeping equipment simultaneously. *Pet'r. Ex. P-10, P-11; Tr. 32:20-24; Tr. 33:6-12, 22-25; Tr. 35:21-25; Tr. 34:6-21.*
8. The units are licensed and registered with the Indiana Bureau of Motor Vehicles. In 2013 and 2014, Indiana Code § 6-6-5.5-7(b) required commercial vehicles weighing more than 11,000 pounds to pay excise tax. The amount of tax due increases proportionally with the weight of the vehicle. Republic paid registration fees and excise tax on the units continuously since receiving them in 2013. The tax was based on the weight of the

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<sup>1</sup> In addition to the street sweeping equipment, the audit also found additional personal property with total values of \$2,159 for 2013 and \$1,808 for 2014. Republic does not dispute this portion of the assessments. *Pet'r Br. at 6, Pet'r Ex. P-10.*

trucks when fully loaded (including the street sweeping equipment). As a result, Republic did not report the sweeping equipment as personal property for the March 1, 2013 and March 1, 2014 assessment dates. *Pet'r. Ex. P-12, P-13, P-14; Pet'r. Ex. P-15; Tr. 38:8-39; Tr. 42:15-25; Tr. 43:1-16; Tr. 22:22, 23:15.*

9. Based on TMA's audit, the Assessor determined that the street sweeping equipment was personal property and made up 75% of the value of each truck--\$183,773 for each Whirlwind unit and \$191,371 for the Broombear unit (before applying depreciation). *Pet'r Ex. P-10.*

#### CONCLUSIONS OF LAW AND ANALYSIS

10. Indiana's personal property tax system is a self-assessment system. Every person, owning, holding, possessing, or controlling personal property with a tax situs in Indiana as of the yearly assessment date must file a personal property tax return. *See* I.C. § 6-1.1-3-7; 50 IAC 4.2-2-2. With limited exceptions, the person who holds legal title to personal property is its owner for purposes of Indiana's property tax statutes. I.C. § 6-1.1-1-9(b); 50 IAC 4.2-2-4(a). Generally, "depreciable personal property" is "all tangible personal property that is used in a trade or business, used for the production of income, or held as an investment that should be or is subject to depreciation for federal income tax purposes." 50 IAC 4.2-4-1.
11. Indiana Code § 6-6-5.5-3(d) (2013)<sup>2</sup> provides an exception for commercial vehicles:

No commercial vehicle subject to taxation under this chapter shall be assessed as personal property for the purpose of the assessment and levy of personal property taxes or shall be subject to ad valorem taxes first due and payable in 2001 or thereafter, whether or not such vehicle is in fact registered pursuant to motor vehicle registration laws.

Rather than being subject to personal property tax, commercial vehicles are subject to an annual excise tax. I.C. § 6-6-5.5-3(a). Here, it is undisputed that the trucks are

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<sup>2</sup> In 2014, the Indiana Legislature made a nominal amendment to the statute removing the "first due and payable in 2001 or thereafter" language. I.C. § 6-6-5.5-3 (2014).

commercial vehicles and subject to excise tax. Republic paid that tax based on the weight of the vehicle including the brushes, vacuums, and other street sweeping components. It argued that the subject property is exempt from personal property tax because it is part of a commercial vehicle subject to excise tax. Ind. Code § 6-6-5.5-3 (2014).

12. The Assessor argued that the sweeping equipment, such as the brooms and vacuums, is separable from the chassis and therefore personal property under I.C. § 6-1.1-1-11 and 50 IAC 4.2-1-1.1, which reads:

(1) “Personal Property”:

(1) has the meaning set forth in IC 6-1.1-1-11; and

(2) also includes nonautomotive equipment attached to excise vehicles.

13. “Nonautomotive” is not defined in the regulation. The Assessor argued that the plain, ordinary, and usual meaning should apply and cited to Merriam-Webster’s definition of automotive: “(1) self-propelled; or (2) of, relating to, or concerned with self-propelled vehicles or machines.” *Merriam Webster*, automotive <<https://www.merriam-webster.com/dictionary/automotive>> (last visited June 26, 2018). Based on this definition, the Assessor argued that nonautomotive equipment is “equipment unrelated to the propulsion of the vehicle to which it is attached.” *Resp’t Proposed Findings at 6*. As further support, the Assessor cited to a March 3, 2011 memorandum from the DLGF.<sup>3</sup> This memorandum provided various examples of commercial vehicles. While it does not directly address street sweeper trucks, it does address other similar vehicles such as garbage trucks. It states that the chassis and compaction equipment on a garbage truck are subject to excise tax, while the front-end lift would be subject to personal property tax.

14. Republic argues that both the administrative regulation and the DLGF memo impermissibly expand the definition of personal property. We need not address this

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<sup>3</sup> The Assessor’s witness, Mr. Lukomski, claimed to have additional insight into the DLGF’s intent in drafting the memo based on his experience working at the DLGF. We decline to venture outside the memo itself when considering its application.

argument as we find the subject property is not personal property even under the DLGF regulation. First, we note that the Assessor’s argument that any equipment not related to “propulsion” is personal property is inconsistent with the DLGF memo. The compaction equipment on a garbage truck has no relation to the propulsion of the vehicle. Yet the memo states that equipment is subject to excise tax. Similarly, a car stereo is unrelated to the propulsion of the vehicle, yet it is not separately taxed as personal property. We decline to adopt the Assessor’s unduly narrow interpretation. Rather, under the facts of this case, we find we must consider whether the property in question is an integral and permanent part of the vehicle. This interpretation is consistent with the DLGF memo—a compacter on the back of a garbage truck is not easily removable, and it is an essential part of the vehicle’s function as a garbage truck. In contrast, a garbage truck is still a garbage truck without a front-end lift.

15. The subject property is more analogous to the compaction unit than the front end lift. Republic purchased the trucks as fully functioning street sweepers, it did not purchase individual components. The sweepers and vacuum equipment are permanently attached to the trucks. Moreover, without the brushes and vacuum equipment, the vehicle would not function as a street sweeper. Finally, the weight of the subject property is included in the calculation of Republic’s excise tax. For all these reasons, we find the entirety of the trucks, including the sweeping equipment, falls under the definition of “commercial vehicle”, leaving it outside the purview of the Assessor.

### CONCLUSION

16. The trucks, including the sweeping equipment, are commercial vehicles and therefore not subject to taxation as personal property under I.C. § 6-6-5.5-3. The subject property’s assessments are reduced to:

2013	\$1,760,310
2014	\$2,669,570

The Assessments are changed accordingly. This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.